

IP 05-0158-CR 1 T/F USA v Curl
Magistrate Kennard P. Foster

Signed on 1/18/06

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

USA,)	
)	
Plaintiff,)	
vs.)	
)	
CURL, DANIEL J,)	CAUSE NO. IP05-0158-CR-01-T/F
)	
Defendant.)	

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANIEL J. CURL,

Defendant.

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CAUSE NO. IP 05-158-CR-01 T/F

ENTRY AND ORDER OF DETENTION PENDING TRIAL

Summary

This cause came before the Court on January 11, 2006, for a detention hearing. Defendant appeared for an initial appearance on the Indictment on January 9, 2006. At that time the government moved for the Defendant's detention on the basis that the Defendant was a serious risk of flight. The hearing was held pursuant to 18 U.S.C. § 3141 *et seq.* The United States appeared by James M. Warden, Assistant United States Attorney, and the Defendant appeared in person and by counsel, James C. McKinley.

Findings of Facts and Conclusions of Law

1. The Defendant, Daniel J. Curl, is charged in this cause by indictment with counterfeiting securities of the United States in violation of 18 U.S.C. § 471.
2. Pursuant to 18 U.S.C. § 471, such counterfeiting may be punished by up to twenty years imprisonment.
3. The Court takes judicial notice of the Indictment in this cause. The Court further incorporates the evidence admitted during the detention hearing as set forth here.

4. The Court admitted into evidence and considered the Pre-Trial Services report regarding the issue of release or detention. Furthermore the Court considered the testimony of Special Agent Gault, called by the government and the proffer made by the Defendant.

5. The evidence regarding the commission of the charged offense is strong and is not controverted.

6. When a motion for pretrial detention is made, the Court engages in a two-step analysis: first, the judicial officer determines whether one of six conditions exists for considering a Defendant for pretrial detention; second, after a hearing, the Court determines whether the standard for pretrial detention is met. *United States v. Friedman*, 837 F.2d 48, 49 (2nd Cir. 1988).

7. A Defendant may be considered for pretrial detention in only six circumstances: when a case involves one of either four types of offenses or two types of risks. A Defendant is eligible for detention upon motion by the United States in cases involving (1) a crime of violence, (2) an offense with a maximum punishment of life imprisonment or death, (3) specified drug offenses carrying a maximum term of imprisonment of ten years or more, or (4) any felony where the Defendant has two or more federal convictions for the above offenses or state convictions for identical offenses, 18 U.S.C. § 3142(f)(1), or, upon motion by the United States or the Court *sua sponte*, in cases involving (5) a serious risk that the person will flee, or (6) a serious risk that the Defendant will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, a prospective witness or juror. *Id.*, § 3142(f)(2); *United States v. Sloan*, 820 F. Supp. 1133, 1135-36 (S.D. Ind. 1993). The existence of any of these six conditions triggers the detention hearing which is a prerequisite for an order of pretrial detention. 18 U.S.C. § 3142(e). The judicial officer determines the existence of these conditions by a preponderance of the evidence. *Friedman*, 837 F.2d at 49. *See United States v. DeBeir*, 16 F. Supp.2d 592, 595 (D. Md. 1998) (serious risk of flight); *United States v. Carter*, 996 F. Supp.

260, 265 (W.D. N.Y. 1998) (same). In this case, the United States moves for detention pursuant to § 3142(f)(2)(A) and the Court has found this basis exists.

8. Once it is determined that a Defendant qualifies under any of the six conditions of § 3142(f), the court may order a Defendant detained before trial if the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community. 18 U.S.C. § 3142(e). Detention may be based on a showing of either dangerousness or risk of flight; proof of both is not required. *United States v. Fortna*, 769 F.2d 243, 249 (5th Cir. 1985). With respect to reasonably assuring the appearance of the Defendant, the United States bears the burden of proof by a preponderance of the evidence. *United States v. Portes*, 786 F.2d 758, 765 (7th Cir. 1985); *United States v. Himler*, 797 F.2d 156, 161 (3rd Cir. 1986); *United States v. Vortis*, 785 F.2d 327, 328-29 (D.C. Cir.), *cert. denied*, 479 U.S. 841, 107 S. Ct. 148, 93 L.Ed.2d 89 (1986); *Fortna*, 769 F.2d at 250; *United States v. Chimurenga*, 760 F.2d 400, 405-06 (2nd Cir. 1985); *United States v. Orta*, 760 F.2d 887, 891 & n. 20 (8th Cir. 1985); *United States v. Leibowitz*, 652 F. Supp. 591, 596 (N.D. Ind. 1987). With respect to reasonably assuring the safety of any other person and the community, the United States bears the burden of proving its allegations by clear and convincing evidence. 18 U.S.C. § 3142(f); *United States v. Salerno*, 481 U.S. 739, 742, 107 S. Ct. 2095, 2099, 95 L. Ed. 2d 697 (1987); *Portes*, 786 F.2d at 764; *Orta*, 760 F.2d at 891 & n. 18; *Leibowitz*, 652 F. Supp. at 596; *United States v. Knight*, 636 F. Supp. 1462, 1465 (S.D. Fla. 1986). Clear and convincing evidence is something more than a preponderance of the evidence but less than proof beyond a reasonable doubt. *Addington v. Texas*, 441 U.S. 418, 431-33, 99 S. Ct. 1804, 1812-13, 60 L. Ed. 2d 323 (1979). The standard for pretrial detention is “reasonable assurance”; a court may not order pretrial detention because there is no condition or combination of conditions which would *guarantee* the Defendant’s appearance or the safety of the community. *Portes*, 786 F.2d at 764 n. 7; *Fortna*, 769 F.2d at 250; *Orta*, 760 F.2d at 891-92.

9. This Court considers the evidence presented on the issue of release or detention weighed in accordance with the factors set forth in 18 U.S.C. § 3142(g) and the legal standards set forth above. Among the factors considered both on the issue of flight and dangerousness to the community are the Defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearances at court proceedings. 18 U.S.C. § 3142(g)(3)(A). The presence of community ties and related ties have been found to have no correlation with the issue of safety of the community. *United States v. Delker*, 757 F.2d 1390, 1396 (3rd Cir. 1985); S. Rep. No. 98-225, 98th Cong., 1st Sess. at 24, *reprinted in* 1984 U.S. Code Cong. & Admin. News 3182, 3207-08.

10. The Court finds there is clear and convincing evidence (even though the Court need find only by a preponderance of the evidence) that the Defendant is a serious risk of flight if released. That evidence, coupled with the factors states below, by clear and convincing evidence also makes him a danger to the community. More particularly, the Court finds:

- a. The Defendant has been regularly involved in criminal activity since before he reached adulthood;
- b. This case involves a felony and the Defendant has two or more prior qualifying felony convictions as described in 18 U.S.C. § 3142(f)(1)(D), specifically, two (2) burglary convictions;
- c. The Defendant has not less than five (5) felony convictions;
- d. The Defendant has multiple convictions involving dishonesty and disrespect for the law;
- e. The Defendant has multiple instances of failure to appear in court and violations of his supervision;
- f. The Defendant has been a chronic abuser of crack cocaine.

11. The evidence presented in this case demonstrates there is no condition or combination of conditions of release that would reasonably assure the Defendant's appearance in court as ordered or the safety of the community.

WHEREFORE, DANIEL J. CURL is hereby committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. Mr. Curl shall be afforded a reasonable opportunity for private consultation with defense counsel. Upon order of this Court or on request of an attorney for the government, the person in charge of the corrections facility shall deliver Mr. Curl to the United States Marshal for the purpose of an appearance in connection with the Court proceeding.

DATED this ____ day of January, 2006.

KENNARD P. FOSTER, Magistrate Judge
United States District Court

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U. S. Marshal

U. S. Probation Office, Pre-Trial Services Division